UNITED STATES DISTRICT COURT

DISTRICT OF PUERTO RICO

In Re:	)	Docket No. 3:17-BK-3283(LTS)
	)	
	)	PROMESA Title III
The Financial Oversight and Management Board for Puerto Rico,	)	(Jointly Administered)
as representative of	)	
The Commonwealth of Puerto Rico, *et al.*	)	October 28, 2020
Debtors,	)	

OMNIBUS HEARING

BEFORE THE HONORABLE U.S. DISTRICT JUDGE LAURA TAYLOR SWAIN

UNITED STATES DISTRICT COURT JUDGE

AND THE HONORABLE U.S. MAGISTRATE JUDGE JUDITH GAIL DEIN

UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

ALL PARTIES APPEARING TELEPHONICALLY

For The Commonwealth of Puerto Rico, *et al.*:	Mr. Martin J. Bienenstock, PHV Mr. Brian S. Rosen, PHV
For Puerto Rico Fiscal Agency and Financial Advisory Authority:	Mr. Peter Friedman, PHV Mr. Luis C. Marini Biaggi, Esq.

APPEARANCES, Continued:

For National Public Finance Guarantee Corporation:	Mr. Marc E. Kasowitz, PHV Mr. Adam L. Shiff, PHV
For the Official Committee of Unsecured Creditors of all Title III Debtors:	Mr. Luc A. Despins, PHV Mr. John Arrastia, PHV
For Ambac Assurance Corporation:	Ms. Atara Miller, PHV
For the Lawful Constitutional Debt Coalition:	Mr. Susheel Kirpalani, PHV
For the QTCB Noteholder Group:	Mr. Kurt A. Mayr, PHV Mr. Sabin Willett, PHV
For Sculptor Capital Management:	Mr. Thaddeus D. Wilson, PHV
For ERS Bondholders:	Mr. Benjamin Rosenblum, PHV
For the Constitutional Debt Group:	Mr. Joseph Palmore, PHV
For the Ad Hoc Group of General Obligation Bondholders:	Mr. Mark Stancil, PHV
For the Ad Hoc Group of Constitutional Debtholders:	Ms. Theresa Foudy, PHV

Proceedings recorded by stenography. Transcript produced by CAT.

I N D E X

San Juan, Puerto Rico

October 28, 2020

At or about 9:37 AM

* * *

THE COURT: Buenos dias. This is Judge Swain speaking.

MS. NG: Judge, give us one more minute, because I just got a little glitch in Court Solutions, so --

THE COURT: All right. I'll wait.

MS. NG: Unfortunately, there's a problem with the connection --

Counsel, can you all hear us or no?

UNIDENTIFIED PERSON: We can hear you.

UNIDENTIFIED PERSON: Yes.

UNIDENTIFIED PERSON: Yes.

MS. NG: Okay. Judge, I'm sorry about that.

THE COURT: All right. Then we will proceed.

Ms. Tacoronte, would you please call the case?

COURTROOM DEPUTY: Good morning, Your Honor.

The United States District Court for the District of Puerto Rico is now in session. The Honorable Laura Taylor Swain presiding. Also present, the Honorable Judith Dein. God save the United States of America and this Honorable Court.

Bankruptcy case --

THE COURT: Thank you, Ms. Tacoronte. I'm sorry.

COURTROOM DEPUTY: I'm sorry, Your Honor.

Bankruptcy case 17-3283, *In re: The Financial Oversight and Management Board for Puerto Rico, as representative of the Commonwealth of Puerto Rico, et al.*, for Omnibus Hearing.

THE COURT: Thank you, Ms. Tacoronte.

And again, buenos dias. Good morning. Welcome counsel, parties in interest, and members of the public and press. This is Judge Laura Taylor Swain speaking.

As has been the case with our hearings over the past several months, today's telephonic Omnibus Hearing is occurring in what continue to be challenging times for all stakeholders in these Title III proceedings.

Our thoughts remain with all of the people on the island and on the mainland who have been affected by the Coronavirus pandemic, and with all who have been affected by the earthquakes and the hurricanes that have been going on this year.

We also note, with sorrow and with sympathy for the Puerto Rico District and First Circuit Court families, this week's passing of Circuit Judge Juan Torruella, who played extraordinary roles in the development of the law and in the life of this island.

To ensure the orderly operation of today's telephonic

hearing, all parties on the line must mute their phones when they are not speaking. If you are accessing these proceedings using a phone and a computer, please be sure to select "mute" on both the Court Solutions dashboard and on your phone. When you need to speak, you must unmute on both the Court Solutions dashboard and on your phone.

I remind everyone that, consistent with the court and judicial conference policies and the Orders that have been issued, no recording or retransmission of the hearing is permitted by any person, including but not limited to the parties, members of the public, and the press. Violations of this rule may be punished with sanctions.

I will be calling on each speaker during these proceedings. When I do, please identify yourself by name for clarity of the record. After the speakers listed on the Agenda for each of today's matters have spoken, I may provide an opportunity for other parties in interest to address briefly any issues raised during the course of the presentations that require further remarks. If you wish to be heard under these circumstances, please state your name clearly at the appropriate time. Don't just use the wave function on the Court Solutions dashboard, but speak your name. I will call on the speakers if more than one person wishes to be heard.

Please don't interrupt each other or me during the

hearing. If we interrupt each other, it is difficult to create an accurate transcript. Having said that, I apologize in advance for breaking this rule, as I may interrupt if I have questions or if you go beyond your allotted time. If anyone has difficulty hearing me or another participant, please say something immediately.

The time allotments for each matter and the time allocations for each speaker are set forth in the Agenda that was filed by the Oversight Board on Monday, October 26, 2020. The Agenda, which was filed as Docket Entry No. 14930 in Case No. 17-3283 is available to the public at no cost on Prime Clerk for those who are interested.

I encourage each speaker to keep track of his or her own time. The Court will also be keeping track of the time and will alert each speaker when there are two minutes remaining with one buzz, and when time is up, with two buzzes. Here is an example of the buzz sound.

(Sound played.)

THE COURT: If your allocation is two minutes or less, you will just hear the two final buzzes.

If we need to take a break, I will direct everyone to disconnect and dial back in at a specific time. This morning we will proceed from 9:30 -- well, from now until 12:50, and there will be a break in between the arguments of the motions. And then, if necessary, we'll resume at 2:10 and go to 5:00.

The first Agenda item is, as usual, status reports from the Oversight Board and AAFAF. As I requested in the Procedures Order, these reports have been made in writing in advance of this telephonic hearing and are available on the public docket at Docket Entry Nos. 14949 and 14958 in Case No. 17-3283. And I thank the Oversight Board and AAFAF for their comprehensive and detailed reports.

Does counsel for the Oversight Board have any remarks at this time in addition to the written status report?

MR. BIENENSTOCK: Your Honor, this is Martin Bienenstock. Sorry. It took me a while to unmute both buttons. But no, we don't have anything additional, but, of course, we're ready to answer any questions the Court has.

THE COURT: Thank you. Good morning, Mr. Bienenstock. I don't have any questions for the Oversight Board at this time.

And so now I will turn to counsel for AAFAF. Does counsel for AAFAF have any remarks at this time in addition to the written status report?

MR. MARINI BIAGGI: Good morning, Your Honor. Luis Marini for AAFAF.

Your Honor, we don't have anything to add other than what we put in the report.

THE COURT: Thank you, Mr. Marini. I do have one more question for you. And I don't know whether you're in a

position to answer it, but in reading about the arrangements that have been made to try to subsidize efforts for families to connect their children with distance learning, I was wondering if you know what proportion of Puerto Rico's school children are actually being reached, are actually participating in distance learning at this time?

MR. MARINI BIAGGI: Well, Your Honor, our understanding is that all of them are participating in one of the methods that the Department has for distance learning. They have at least three methods: They have online learning through a computer; they have distance learning through the government's television program; and they have distance learning where parents can pick up, you know, printed modules for their children. The students are participating one way or the other throughout them.

I don't have the latest figures, Your Honor, in terms of which percentage is involved in which part. I do know that most of them are taking classes through the online methods that I described.

THE COURT: Well, I'm pleased to hear that, and I am pleased to hear that there are three modalities that are being used vigorously. Here on the mainland as well there are problems with internet connectivity and making effective distance learning for children. So thank you for adding that information.

Do any other counsel who are on the line have questions or comments in connection with the status reports? State your name clearly now if you do, and then wait for me to call on you to speak. And I will wait 30 seconds for people to unmute if anyone wants to be heard.

(No response.)

THE COURT: All right. Thank you. The 30 seconds are up, and so we will go on to the contested matters.

Before I hear arguments on the motion for appointment of an independent investigator, I have some comments regarding the PSA Creditors' motion for your consideration that I hope counsel will respond to in their arguments later this morning concerning the PSA Creditors' motion.

Having read and considered the submissions on that motion, I believe that this Court has subject matter jurisdiction of the motion and the power to set deadlines. Nevertheless, the relief sought by the PSA Creditors appears to be both inappropriate and Draconian given the Oversight Board's stated intention to engage in further negotiations and ultimately amend the Plan of Adjustment, and given other factors, such as the Oversight Board's membership turnover, the political transitions that are in progress, and the pandemic.

What I propose, and what I would like the parties to discuss in their oral arguments, is an order setting a

deadline of February 10th, 2021, for the Oversight Board to file a term sheet disclosing the material, economic, and structural terms of the amended plan proposal with which it intends to proceed to confirmation.

The Court will expect good faith negotiations by the Board and all relevant stakeholders on the development of such an amended plan. The terms of the Plan will, thus, have to be on the transition period agenda of the incoming Commonwealth Governor, as well as that of the outgoing administration, and the new members of the Oversight Board will have to work quickly and cooperatively to keep the project going at speed.

The term sheet would have to be accompanied by a proposed timetable for the filing of a formal proposed amended plan and disclosure statement, discovery and litigation concerning the disclosure statement, solicitation and voting, and confirmation proceedings. I invite the parties to make this proposed structure the focus of their remarks, although I am, of course, prepared to hear, within the previously announced time limits, whatever arguments the parties believe are pertinent.

And now we will turn to argument on the motion for an independent investigation. That is National Public Finance Guarantee Corporation's Motion for Independent Investigation, which was filed as Docket Entry No. 14450 in Case No. 17-3283. And we have a total of 60 minutes allotted for argument,

beginning with 15 minutes by counsel for National.

Counsel for National? Mr. Kasowitz, or Mr. Shiff, would you please unmute on both the computer and your phone and announce yourself?

MR. KASOWITZ: Your Honor, can you hear me? We're trying to unmute.

THE COURT: I can hear you now.

MR. KASOWITZ: Thank you very much. Good morning, Your Honor. It's Marc Kasowitz for National Public Finance Guarantee Corporation.

Your Honor, it's undisputed that certain of the hedge funds that are involved in this proceeding were actively trading in Commonwealth bonds at the same time that they were engaged in a confidential mediation which sought, among other things, to determine the value of those very same bonds. It's also undisputed that it would have been improper for those hedge funds to engage in that trading using confidential information that they learned during the mediation.

The hedge funds' supplemental Rule 2019 Disclosures raise very serious questions, in our view, about whether that is exactly what happened here. And, Your Honor, those concerns have not been allayed. If anything, they've only been heightened by the hedge funds' objections to this motion.

Here are some examples of the trading that the hedge funds have engaged in that are potentially troubling. In July

2019, just days after the initial PSA was announced, Silver Point, which is a member of the Ad Hoc Group of Constitutional Debtholders, held over 50 million dollars in the 2014 series of late vintage GO bonds. By early February 2020, before the new PSA was announced, Silver Point had increased its position to nearly 300 million dollars. That's a six-fold increase, Your Honor. And, obviously, the treatment of those bonds was one of the principal subjects of the mediation.

Sculptor Capital, which is a member of the QTCB Group, in September 2019, before the mediation, didn't own any late vintage 2014 GO bonds. By February 18, 2020, after the new PSA was announced, Sculptor owned approximately 110 million dollars of those bonds. Over the same time period, Sculptor also doubled its holdings of the late vintage 2012 GO bonds from about 40 million to about 80 million dollars.

GoldenTree, a member of the LCDC Group, increased its 2014 late vintage GO bond holdings five-fold, from about 12 million dollars in August 2019, before the mediation began, to over 60 million dollars in February 2020.

Overall, Your Honor, from January 2019 to June 2020, based on their own disclosures, members of the hedge fund groups increased their positions in GO and PBA bonds from 5 billion to 7.7 billion dollars, a 53 percent increase.

Your Honor, these hedge funds were buying up these bonds when they and the other participants in the confidential

mediation were negotiating how the bonds, in particular the late vintage GO bonds, would be treated in the new PSA. And what they were negotiating and agreeing to, negotiations that were, by this Court's Order, required to be confidential, was treatment of those bonds that was dramatically better than the way they were treated in the initial PSA.

This has raised questions not just for our client, but also for many others, including other parties in this case and members of Congress. Your Honor, we respectfully submit that the best, most efficient way to deal with what appears on its face to be potential serious misconduct is to order a prompt investigation by an independent, objective nonparty. Someone who doesn't have any stake in the outcome here.

It makes sense to do that now rather than wait for the confirmation, as the hedge funds would prefer. First, it would ensure an objective evaluation of the facts sooner rather than later. Second, it would provide full disclosure before the mediation is concluded, which would be valuable information for the participants in the mediation. And, third, it could help avoid protracted discovery and motion practice at the confirmation stage, and enable the Commonwealth to re-enter the capital markets more quickly.

The hedge funds --

THE COURT: Mr. Kasowitz --

MR. KASOWITZ: Yes.

THE COURT: -- I have a question for you.

MR. KASOWITZ: Of course.

THE COURT: If your inferences that there was improper trading on inside information, notwithstanding various blow-outs, are true, who would have been harmed as a result? Because it seems to me that if it is the municipal bond market participants generally, that sort of alleged misconduct in the securities market would be squarely within the purview of securities regulators. And if the trades were among the hedge funds themselves, as the respondents to the motions generally allege, with some exceptions, why should Puerto Rico pay to determine whether one of them took advantage of another?

And, finally, in the context of confirmation, to the extent you say that this makes for an unfair proposal, there are opportunities to make specific allegations about unfairness of the proposal and litigate those in the context of confirmation. So why should the Commonwealth fund essentially a securities market investigation that may or may not have a proper factual basis?

MR. KASOWITZ: Yes, Your Honor. Thank you. I think there are two reasons. First, I think that there is -- our concern is that there's a taint on the overall process here. The mediation is a critical process, and critical process for resolving all of these parties' interests. And if --

THE COURT: A taint on the process -- just a moment. A taint on the process because you think bad people are involved, or is there some specific distortion of the now publicly disclosed economics that will be set up for litigation in connection with the confirmation process?

MR. KASOWITZ: First of all, Your Honor, just to be clear, we're not -- we are not criticizing the mediation process, and we're not criticizing the mediation team members. To the extent that we've had the opportunity to review disclosures and the like, the concern that we have, and that others have as well, is that there has been some trading by certain parties based on information that was supposed to be confidential. And we think that that taints the overall process and that that -- and that that casts a potential cloud on the interests of the individual creditors here for these bonds, which is not a good thing for the overall resolution of the Commonwealth's issues.

The reason that we think that this is a better mechanism, that the appointment of an independent investigator is a better mechanism than waiting until confirmation is that it can be done, we believe, relatively quickly, efficiently, by someone who doesn't have any stake in the matter, rather than waiting for -- and it can be done sooner, in order to clear up and clarify any potential taints. And rather than waiting for confirmation, which could lead to very broad

discovery by lots of different -- by lots of different parties, and potentially protracted motion practice over that discovery, we just think that, under the circumstances, it can be done cheaper now; it can be done effectively now; and it can avoid a taint sooner; and that the relatively small amount of cost would outweigh the -- would outweigh the -- that the benefits to everyone, and to the process, and to the Court, would outweigh the relatively small amount of cost that would be involved.

THE COURT: Thank you. Please proceed.

MR. KASOWITZ: So the hedge funds here, Your Honor, oppose an investigation. I'm not sure exactly why they do, because if what they -- if their claim is that they've had absolutely nothing -- done absolutely nothing wrong in connection with their trading, then they shouldn't have any problem having someone independent confirm that.

They make several arguments. We don't think that any of the arguments are availing here. First, they all deny having traded securities with the use of confidential information. Some of them, while they admit that they did a lot of trading during the mediation, claim that it was done during so-called unrestricted periods after so-called cleansing materials were publicly released. Others, like Sculptor, claim that most of their trades were done after the new PSA was announced. And others admit that they traded

during the so-called restricted periods, but procured big boy disclaimers, which they claim mean that they didn't violate any insider trading laws.

These hedge funds want everyone, including this Court, to take their word for it that they didn't do anything wrong; but, in fact, we think that the explanations that they've proffered in their objections raise more questions than they answer. Although the hedge funds point to unrestricted time periods, cleansing materials and other disclosures, they -- all of their objections have avoided the really -- really the key question here, Your Honor, which is whether they were trading using confidential information that they had concerning what was being discussed at the mediation itself.

And not to put too fine a point on it, if the discussions, whether formal or informal, among the parties at the mediation signaled that the late vintage bonds were going to receive more favorable treatment in the new PSA, did any hedge funds trade on that information? None of that, none of that was disclosed in any of the cleansing materials that we're familiar with. All of that needs to be addressed in an investigation.

Second, the LCDC Group argues that their trading is permitted under the explicit terms of the Mediation Agreement. And while it's true that the Mediation Agreement did not

prohibit trading by the participants, it also explicitly reminded the participants that any trading needed to be done in compliance with applicable securities laws. Most importantly, the Mediation Agreement does not permit trading using confidential information and breach of the Court's confidentiality orders, and that's what's at issue here.

Now, Your Honor, one thing I should have said -- I'm sorry. The third argument advanced by the hedge funds is that the Court lacks the authority to order an investigation. We disagree, Your Honor. The Court has the inherent power to enforce its own orders, here the Mediation Order and the Supplemental Confidentiality Order, and to protect the inherent integrity of this proceeding. And if there were any doubt, which there shouldn't be, that should be resolved by Section 105 of the Bankruptcy Code.

Fourth, the hedge funds argue that an investigation would be too expensive, but that the hedge funds shouldn't be heard to complain that it's too expensive to investigate their alleged misconduct. We believe, as I've said before, that an effective investigation could be conducted efficiently and reasonably, and that the benefits of assuring the integrity of the mediation process would be well worth the cost, which we think would be limited and reasonable.

Now, Your Honor, the hedge funds say they've done nothing wrong, and perhaps that's right, but given what we

already know and the serious issues that have already been raised, we believe that a prompt, independent investigation is the most effective and efficient way to resolve these issues. Respectfully, Your Honor, we believe our motion should be granted. Thank you.

THE COURT: I have a question for you. One of your proposals is that the Court direct the U.S. Trustee to undertake the investigation. What authority do you believe the Court has to direct another branch of government, the Department of Justice, to conduct an investigation where section 307 is not applicable in this case, and I certainly don't have control over the budget of the Department of Justice?

MR. KASOWITZ: I believe that -- we believe, Your Honor, that you have it within the inherent power of your office as an Article III Judge. There's a -- in the decision *Neiman Marcus Group*, the United States Trustee performed a similar investigation, so we think that you have that authority.

THE COURT: Section 307 applied --

(Sound played.)

THE COURT: -- in *Neiman Marcus*, and that provision is not incorporated into PROMESA.

MR. KASOWITZ: Understood, Your Honor.

THE COURT: And the facts were very different.

That involved, I think, a committee that the U.S. Trustee had appointed, didn't it?

MR. KASOWITZ: Yes, Your Honor. But we -- look, we believe that the Court has inherent authority, and certainly the authority to enforce its own orders, both in terms of the Mediation Order and the confidentiality orders and the like. And so whether it's a third party that has had no dealings with respect to this, or whether it's the U.S. Trustee -- and if the U.S. Trustee accepted the appointment and the designation, that would solve any statutory issues here.

(Sound played.)

THE COURT: All right. It seems the time is up. Thank you so much, Mr. Kasowitz.

And now we will turn to counsel for the Committee.

MR. ARRASTIA: Good morning, Your Honor.

THE COURT: Good morning.

MR. ARRASTIA: John Arrastia on behalf of the Committee. Thank you for your time.

First off, the Committee believes that this is not something that can be characterized as a two or three party dispute between some parties and the bondholders. These issues address the fundamental integrity of the Title III proceedings, and those proceedings are predicated on concepts of good faith, fairness and equity.

In her Congressional testimony, Ms. Jaresko of the

Oversight Board was asked by Congress about insider trading and if the Board had done anything. And she testified, No. We are not investigating them. They are in the hands of the Court and the mediator.

In her follow-up testimony, written testimony, she identified the 2019 disclosures as one of the practices employed to deter insider trading. And based on those 2019 Disclosures, the Committee joins in National's request. It hasn't reached the same conclusions, but an independent evaluation highlights questions that merit further investigation in the Committee's view.

(Sound played.)

MR. ARRASTIA: Very simple example.

THE COURT: That means two minutes are left. Yes.

MR. ARRASTIA: Thank you. That means that -- one example, the 2014 General Obligation Bonds. In 2019, the Oversight Board sought to disallow claims on that series of bonds. The only public information of consequence was the January Omnibus Objection that included those bonds, as well as the September 27, 2019, Plan of Adjustment. That still would disallow claims based on that bond, but the Oversight Board would settle for 35 percent. That's the range, that's the elements of common knowledge, public knowledge.

But nonetheless, within that five-month period, just before the September PSA, to the Amended PSA in February of

2020, certain members, not all, but certain members of LCDC and the Ad Hoc Group of Constitutional Debtholders increased their holdings in just that one series of bonds by 354 million dollars. Meanwhile, the price increased 22 and a half percent.

If you go back to the earlier 2019 disclosure date, the numbers get bigger, and the increase in just that one series of bonds almost doubled. It grew 91 percent, 621 million, and the price increased in seven or nine months, depending on the disclosure date, 44 percent.

Meanwhile, we know that mediation was ongoing, and settlement proposals were being discussed and exchanged. And we know that because certain time records have been publicly disclosed, and it identifies that.

(Sound played.)

MR. ARRASTIA: So we knew that was happening. Certainly, there's enough to ask questions necessary to confirm the integrity of the process and comply with equitable considerations of these proceedings. And irrespective of any framework the Court may fashion today, the Committee stands by to assist the Court in any further investigation or evaluation.

Thank you for your time, Your Honor.

THE COURT: Thank you, Mr. Arrastia.

Now we turn to the motion opponents. I have, first,

the LCDC for ten minutes.

MR. KIRPALANI: Good morning, Your Honor. It's Susheel Kirpalani.

THE COURT: Good morning, Mr. Kirpalani.

MR. KIRPALANI: Good morning. For the record, on behalf of the Lawful Constitutional Debt Coalition, or the LCDC, Susheel Kirpalani from Quinn Emanuel.

Judge, the members of the LCDC were the first bondholders of Puerto Rico to suggest a compromised path forward that didn't require cutting pensions, didn't impose austerity, and did not debate the Oversight Board's determinations of how much is needed to ensure citizens have essential government services.

We entered this case in March of 2019, and the way we saw it, citizens of Puerto Rico were victims of irresponsible fiscal decisions made over decades by politicians with a core network of partners. National was clearly one of those partners, and despite the self-serving spin in its motion and the tone it takes this morning, National is not the kind of long-term partner that Puerto Rico needs today.

In June of 2019, the Oversight Board announced an initial PSA supported by us as anchor tenants, along with another group of creditors. The structure and settlement contained in that plan proposal did not garner enough support to quiet the noise of litigation. And by late July 2019, this

Court Ordered all major creditors into mediation, to be overseen by a mediation team of federal judges.

A new PSA came out of that mediation in February 2020, and that proposal garnered substantial support. Approximately 60 percent in amount of constitutional debt supported the deal. National was not among them, however. We asked National to join us, and they refused. That's because National didn't like the idea of haircutting constitutional debt to the level that we agreed, because then National would have to make up the difference to its policy holders, including all the post bankruptcy interest payments.

And to make things worse for National, the current Plan contemplates very little money to repay the junior rung clawback debt it insured. If the current Plan became effective, National would be left holding the bag for any amounts not paid by Puerto Rico to bondholders, and that bag is so heavy that it likely tips National into insolvency. So National will stop at nothing to prevent the new PSA plan or any structurally similar one from going forward. And so here we are.

National's motion charges some very heavy allegations, but are very light on the facts, or even a coherent thesis. Despite the clear terms of the Mediation Orders themselves, and despite being one of the original signatories to the Mediation Agreement, National ignores the

actual terms of these documents when it argues that members of the LCDC somehow violated them.

In paragraph one of National's motion, National alleges two things to justify the relief it wants: One, the Court's confidentiality orders may have been violated; and, two, that while participating in Court-Ordered mediation, certain hedge funds, creditors may have engaged in improper trading. Based on these allegations, National then says an investigation is appropriate, and I quote, because such conduct would have materially undermined and negatively impacted the mediation that resulted in the new PSA, or some similarly structured forthcoming agreement.

Desperate to shift the focus from the fact that National itself is not among the 60 percent of Constitutional Debtholders that agreed to compromise, National adopts the familiar playbook of saying the ones that agreed to haircuts are not the original GO and PBA bondholders. But National cannot explain the relevance of that assertion.

If members of the LCDC are financially able and willing to agree to compromise and provide haircuts and savings to the Commonwealth of Puerto Rico under a plan, it does not mean the haircuts are bad for the Commonwealth. They are just bad for National.

Your Honor, we know that sunlight is the best disinfectant, so we had each member of the LCDC disclose and

certify the details of its holdings before and after each phase of negotiations with the Oversight Board. From our papers, to summarize, no member of the LCDC traded in any constitutional debt during the negotiations that led up to the initial PSA between March and June of 2019. This is the original agreement that created the framework for paying early vintage bondholders more than late vintage bondholders, for capping early vintage bondholders, and paying late vintage bondholders ahead of clawback bonds and general unsecured creditors.

As the Court knows, the level of support for that initial PSA was limited. The significant holders of late vintage bonds did not think the proposal was fair, and the Court Ordered mediation in July of 2019 and required that the holders of -- late vintage bondholders be included this time.

While Your Honor Ordered the mediation in late July, the mediation didn't actually begin for a couple of months, and it didn't begin at the same time for every creditor or every creditor group. In fact, this is why the Rule 2019 statements are not the best way to understand the economic positions of holders at the beginning of each mediation session. But I want to explain why that doesn't suggest any wrongdoing.

The timing of when we filed Rule 2019 statements is dictated by the rule itself and by this Court's Rule 2019

orders, not by a mediation protocol. And it's important to remember in the sense that neither the Board nor the mediation team made any public statements as to when mediations were to begin and for whom. But that's not to say the Board didn't know the specific holdings of the participants in the mediation. To the contrary, the Board required creditors to provide CUSIP level information so the Board would know exactly which bonds it was dealing with, ensuring transparency into creditor holdings throughout the negotiations with the issuer.

As was certified by each institution as to itself in our Objection, five of our seven members of the LCDC did not buy or sell any constitutional debt securities while participating in mediation. And as they disclosed through certifications to our Objection, there was nothing nefarious about the isolated transactions that occurred by two of the LCDC while in mediation between October 2019 and February 2020.

All four of the parties involved in these isolated trades were sophisticated investors who had executed the Mediation Agreement. These were not trades on the open market, and the trades were conducted in compliance with the mediation protocol, with no breaches of confidentiality. Three of the four parties were signatories to the initial PSA at the time of the transactions.

So the result, Judge, is that the bonds that were already locked up by the initial PSA merely changed hands to another signatory who had agreed to the same compromised treatment already. And the fourth party was an active participant in the then ongoing mediation, and sold some bonds to another participant. Ultimately, all four of these institutions negotiated and executed the new PSA, supporting the Board's proposed compromise of how all GO and PBA bonds would be treated.

That's it. That's the sum total of trades done by members of the LCDC while engaged in mediation. This is all set forth in detail, accompanied by certification by the institutions.

So having certified the facts --

(Sound played.)

MR. KIRPALANI: -- the same way the holdings are certified in Rule 2019 statements to begin with, National changes the basis for the motion in its Reply Brief. In its Reply, National now says an investigation is needed because it's possible that even when there was no mediation, the trading could have been improper.

The inconvenient truth is that the actual facts don't fit National's original narrative. National wanted to show parties were massively trading during mediation, but that's not true. And it wanted to say members of the LCDC were

taking positions in court that were contrary to their economic interest, and that's not true.

So now National resorts to saying any creditors who participate in mediation may find themselves prohibited from buying or selling bonds even after the mediation is over. Why? Because the issuer may not have effectively cleansed the mediation participants by disclosing all the needed information.

Judge, National's position would prohibit any party that has ever participated in mediation from ever buying or selling bonds again, irrespective of whether or not mediation is ongoing. National's new basis for relief requires the participants to prove a negative. It creates an insurmountable problem for any bankruptcy case where mediation is ordered, including future mediations in this case.

How are creditors supposed to participate in mediation if they can't rely on the rules established for the mediation and the issue of disclosure of material, nonpublic information? The answer, of course, is that they can't rely on those rules. And if they can't rely on those rules, they just won't participate. And that would suit National just fine, because National does not want to see Puerto Rico emerge from bankruptcy unless National is paid in full. That's what this is about.

The economic interests of the members of the LCDC are

all publicly disclosed. The size of the two transactions that took place among four sophisticated parties during mediation is out, also, now publicly disclosed.

(Sound played.)

MR. KIRPALANI: And the world can see it did nothing to undercut the LCDC's overall economic interests, Your Honor.

THE COURT: Thank you.

MR. KIRPALANI: While National disagrees that its junior clawback bonds should receive a very small recovery, and it doesn't think that Constitutional Debtholders should discount or haircut at all, it should register those disagreements as objections to a plan, not by maligning the entire mediation process --

THE COURT: Your time is up.

MR. KIRPALANI: -- and chilling all participation in the future, Your Honor.

THE COURT: Mr. Kirpalani, your time is up.

MR. KIRPALANI: Yes.

THE COURT: Thank you very much.

MR. KIRPALANI: Thank you, Your Honor.

THE COURT: I will now hear from counsel for the Constitutional Debtholders, Ms. Foudy.

MS. FOUDY: Good morning, Your Honor.

THE COURT: Good morning.

MS. FOUDY: Theresa Foudy of Morrison & Foerster on

behalf of the Ad Hoc Group of Constitutional Debtholders.

I would just note, I notice on the Court Solutions dashboard that it says we represent Fir Tree, so I just wanted -- while, Fir Tree is a member of the Group, we actually represent the Ad Hoc Group of Constitutional Debtholders.

Without repeating all of what Mr. Kirpalani said, I would just note for the record that the Constitutional Debtholders join in the arguments of the Lawful Constitutional Debt Coalition.

And I would like to address the lack of authority for the relief that National Public Finance Guarantee Corporation seeks. While National relies upon the Court's inherent power to enforce its own orders, National's allegations, on their face, do not state a violation of the Court's Mediation Order or the Court's Supplemental Confidentiality Order. The Court's Mediation Order, as well as the Court's Supplemental Confidentiality Order, which was issued to address the leaking of confidential mediation information to the press, both require that mediation information be kept confidential. Neither Order says one word about trading.

National's motion conflates disclosing confidential information with trading, but those are two separate things. National's motion is not about enforcing the Court's orders prohibiting the disclosure of confidential information.

Rather, National's motion is about speculation that maybe, perhaps, possibly securities laws could have been violated, because signatories to the Mediation Agreement traded securities at some point in time over the past two years, even though National has presented no evidence that any of those trades were done in violation of the securities laws.

National advocates for transparency, but the Constitutional Debtholders have been transparent. The Constitutional Debtholders have fully disclosed their economic interests in these proceedings and how those interests have changed over time in Rule 2019 statements that are likely the most fulsome and comprehensive Rule 2019 statements ever filed in a case.

In addition, in the Constitutional Debtholders' Joinder to the objections to National's motion, the Constitutional Debtholders both attested to their compliance with the Court's Orders and disclosed what trading, if any, was engaged in while participating in the mediation. While National's Reply Brief dismisses those Disclosures as "counsels' assurances" contained in "legal briefs," each member of the Ad Hoc Group of Constitutional Debtholders verified, under penalty of perjury, that the statements were true.

National has not presented one iota of evidence to Your Honor that contradicts those verified statements.

Instead, the bondholders are attacked by conjecture and the blatantly flawed premise that the fact of having traded somehow equates to that trading having violated the security laws.

Asking this Court to launch a securities market investigation, in spite of the complete disclosures made under penalty of perjury by the Constitutional Debtholders is a frolic and a detour that would set a terrible precedent --

(Sound played.)

MS. FOUDY: -- and is best avoided.

Unless Your Honor has any questions, the Ad Hoc Group of Constitutional Debtholders would rest on the papers and ask this Court to deny National's motion.

THE COURT: Thank you, Ms. Foudy. I have no questions for you.

MS. FOUDY: Thank you, Your Honor.

THE COURT: So now we will turn to counsel for QTCB for five minutes. Mr. Mayr.

MR. MAYR: Good morning, Your Honor. Kurt Mayr of Morgan, Lewis for the --

THE COURT: Hi.

MR. MAYR: -- QTCB Noteholder Group. Can you hear me?

THE COURT: Yes. I mispronounced your name. Hello, Mr. Mayr.

MR. MAYR: No problem. It happens often.

I guess, Your Honor, I will begin with one of National's counsel's first statements, which is that it was undisputed that there was trading occurring during mediation. We, the QTCB Noteholder Group, absolutely dispute that.

We have filed with the Court our Response with a detailed timeline of our holdings, when we were in mediation with confidential mediation information, when and -- how and when the holdings changed, and when trading occurred. And when you look at that, you can see that, like any large public structuring case, the negotiation here involves very specific rules of the road that parties whose business it is to trade in bonds, and that have fiduciary duties to their investors to maximize value, will, when necessary, agree to restrict their ability to trade, engage in negotiations with a pre-negotiated exit from the restriction in trading through appropriate cleansing. And you can see the road map for what happened here in our filing, and you can see that no trades in the QTCB Noteholder Group occurred during any period while they had information in mediation that had not been cleansed.

Now, I think National claims it's protecting the integrity of the process. I actually think this is a full-blown attack on the integrity of the mediation process. National asserts that the Board's cleansing disclosures are insufficient and that it needs to investigate, quote, all

information obtained formally or informally as a result of the mediation, and, at another point, suggests that any conversations at any time between investment funds are relevant as well.

This is a blatant invasion into the mediation process that would permit National discovery into all discussions in the many months and the very long and hard days of mediation that, for important policy reasons, are protected by mediation privilege. The expansive nature of the investigation belies National's disingenuous assurance that this is going to be a, quote, quick and easy and relatively inexpensive process. They literally say they need to hear about everything that was ever said to anyone during mediation in order to satisfy their investigation.

Granting this motion would have an incredible chilling effect on mediation, because all confidential mediation discussions would be subject to the risk of attack by any party unhappy with the mediation result.

Now, I take Your Honor's question about standing at -- you know, National does not claim that it sold bonds or bought bonds from any investment fund that supposedly traded improperly. It doesn't have standing to pursue that. The only standing it has to pursue is, you know, issues related directly to this process. And so they really point to two things.

(Sound played.)

MR. MAYR: One, the power of the Court under 105 that, as has been said, it only relates to confidentiality, and -- though they don't make a single allegation of any confidential information being disclosed. Then they speak to the integrity of the Court, the integrity of the process, but they're not seeking to protect the integrity of the process.

Congress carefully crafted rules and procedures to protect the integrity of this process. Rule 2019 applies. Your Honor has augmented 2019, and we have complied. And that's the level of disclosure that applies to these sorts of issues in this case, and we have complied at all times, above and beyond, including in our Opposition to this motion.

Congress provided confirmation protections, the good faith requirements of the Plan, rote designation, equitable subordination rights. These are all things that National alludes to and will be available to National when ripe. And now, we might not know what plan is actually going to be pursued and what will be ripe until February 21st, 2021. Clearly, the issues they raise today are not ripe with respect to any particular plan until we know more.

And, finally, what they really seek is an examiner. Congress didn't give them that. What they're really asking Your Honor to do is to use 105 to create an investigatory power that wasn't provided by Congress.

I also think it's notable that National really stands alone here. If this outrageous conduct was true -- joinders abound in this case when parties agree with others' requests of the Court. National and the other monolines frequently join in each other's pleadings. Other than the UCC's tepid, half-hearted joinder here, no other party has joined in this motion, which speaks strongly to the --

(Sound played.)

MR. MAYR: -- submission. I'll conclude there, Your Honor.

THE COURT: Thank you, Mr. Mayr.

MS. NG: Judge, it's Lisa. Judge, I'm sorry. It's Lisa. I just got an e-mail from Matthew, from Matt, from the DE's office saying that the AT&T -- they're reporting issues with the AT&T conference and AT&T web manager. So I just wanted to let you know, and let the AT&T participants know also, that I'm keeping an eye on everything. But hopefully this is something that doesn't affect us, but it may just affect us, so I just wanted to let you know.

THE COURT: I saw that message as well. And I think we have someone from our team listening through the AT&T line. Have you been able to verify that they are still on and can hear?

MS. NG: Yes, I will check with Eric.

THE COURT: Okay. I'll wait until you've been able

to verify with him.

MS. NG: Yes. Eric says he's fine there so far.

THE COURT: Okay. So it sounds like our AT&T line is still functioning.

MS. NG: Yes.

THE COURT: So we will continue.

MS. NG: Sorry to interrupt. I'm sorry, Judge.

THE COURT: Oh, no. It's nothing to be sorry for. We have to make sure everything is working for everyone. So thank you, Ms. Ng, for your vigilance on that.

The next speaker is Mr. Stancil for three minutes.

MR. STANCIL: Good morning, Your Honor. Mark Stancil of Willkie, Farr & Gallagher for the Ad Hoc GO Group. I'll be very brief. Good morning.

We fully agree with the other PSA parties that National's motion is completely lacking in merit. As we explained in our Opposition, no member of the GO Group made any trades during any restrictive period, which is more than enough basis to reject National's motion summarily.

I'd like to very briefly emphasize just two additional points. First and foremost, the very allegations National has made, no matter how meritless and easily disproven, are severely damaging to the targeted firms.

As the Court is well aware, our clients are closely regulated and follow strict trading protocols. National's

very casual suggestion that our clients flouted all of those rules and regulations does serious harms to our clients' businesses. It's no different from a lawyer publicly accusing another lawyer of egregious ethical violations without foundation.

Suppose a lawyer shows up to the courthouse one morning driving a new car, and opposing counsel publicly urges the Court to launch an investigation into whether the lawyer may have misappropriated client funds to buy the car. Even if the allegation is summarily and quickly disproven --

(Sound played.)

MR. STANCIL: -- significant damage is already done. And I think the old saying goes something like a lie can travel halfway around the world while the truth is still lacing up its boots, and that's absolutely the case here.

The second point I wanted to emphasize is that the damage is particularly egregious with respect to my clients, who were dragged into National's motion, despite the fact that their Rule 2019 Disclosures do not even fit National's already bogus theory.

Your Honor may recall that the GO Group's holdings actually declined during the time period that National claims PSA Creditors were improperly buying certain bonds. While -- rather than acknowledging that disconnect, National casually tosses in a footnote in their motion announcing that perhaps

our client's decrease in holdings is also suspicious, it says.

And then National speculates, without any basis whatsoever, that PSA Creditors may have been, "working together to reallocate these bonds among themselves." This is pure conspiracy theory nonsense, and the fact that National continues to cling to it is further proof that this motion is a self-serving attempt to disrupt the PSA, and it's not a manifestation of any legitimate concern about the integrity of the process.

And National may not care that its tactics are doing significant harm to the firms that it has nonchalantly accused of serious wrongdoing, but this Court should not countenance National's abuse of the judicial forum. We respectfully urge the Court to deny the motion.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Stancil.

Next I have counsel for Sculptor, Mr. Wilson, for three minutes.

MR. WILSON: Good morning, Your Honor. Thad Wilson from King & Spalding on behalf of Sculptor Capital.

National brought its motion without a shred of evidence and based purely on suspicion, suspicion, as you've heard this morning, driven by its opposition to the Plan. National's Motion and Reply offer the Court no facts, just hunches, and very biased hunches at that. That is

specifically true with respect to its false and misleading portrayal of trading by Sculptor Capital's funds.

Sculptor has conclusively demonstrated that it did not engage in any trading that violated this Court's orders or any other trading restrictions, and there is no basis whatsoever for the relief National requests. Indeed, in its Motion and Reply Brief, National does not point to a single instance where Sculptor violated a Court order. National does not point to a single instance where Sculptor violated any agreement. And most certainly, National's motion has not shown Sculptor has violated any applicable law.

Rather, National, without a shred of evidence, and without even a reasonable basis for its beliefs, lobbed in a Hail Mary and tried to mislead the Court with a chart showing that Sculptor traded in 2012 and 2014 bonds during times Sculptor had or might have had confidential information. That chart is in National's motion.

(Sound played.)

MR. WILSON: It was based on incomplete data, and National filled in the blanks with its imagination. We caught them misleading the Court. We pointed it out in our Response, and now National is extremely defensive about it, as the Court can see from National's Reply Brief.

To be clear, Sculptor has done nothing wrong. It has followed its stringent compliance program, and only traded

after a cleansing event occurred in a press article relating the cleansing materials was published by the likes of Reorg Research and other news outlets.

In our briefing and the demonstrative chart we provided to the Court for today's hearing, that's at Docket No. 14937, Sculptor explained its trading of all GO bonds, not just the 2012 and 2014 bonds. There is no equivocation. Sculptor's Response addresses all of its trades.

As the chart demonstrates, Sculptor only traded after a cleansing event occurred, and usually days after the cleansing event occurred, including after the announcement of the Amended PSA on February 9th. We merely highlighted the 2012 and 2014 bonds in a second chart in the Response, because that's where National most blatantly mislead the Court with a chart showing Sculptor trading in those bonds, when, in reality, Sculptor was not trading in them at all.

In the Reply, National focuses only on trading by others. They point to nothing Sculptor has even arguably done wrong. But if the Court decides to indulge National's farce and its blatant attempt to derail the confirmation process, there is no justification for including Sculptor in the investigation.

(Sound played.)

MR. WILSON: And we ask the Court to deny National's motion.

THE COURT: Thank you, Mr. Wilson.

Next I have Mr. Bienenstock for the Oversight Board for four minutes.

MR. BIENENSTOCK: Good morning, Your Honor. Martin Bienenstock of Proskauer Rose, LLP, for the Oversight Board.

THE COURT: Good morning.

MR. BIENENSTOCK: I have a few points. I'll try to make them very quickly.

Number one, out of respect for the members of Congress who sent the letter to the New York Attorney General asking for investigation, and out of an overall concern for the integrity of the process, the Board fully supports the reference by these Congressional members to the New York Attorney General of this matter to decide if it even warrants an investigation, and if it does, a full investigation, and even prosecution if that's warranted.

Second, the Resident Commissioner of Puerto Rico, Jenniffer Gonzalez, referred this same matter to the SEC last week. Third, the Board, through my firm and my partner, Hadassa Waxman, is referring this to the Department of Justice -- the United States Department of Justice. Each of these entities can both investigate and prosecute if that's warranted.

And more specific -- I want to highlight that National's emphasis that it wants an investigator who cannot

prosecute, it is highly suggestive that they want someone who will think of hypothetical possibilities, create a gray area with no resolution.

Number two, we have never filed a proposed plan that would discharge one creditor's claim against another, or any type of insider trading claims, and the Board doesn't intend to do that. So this is really outside of the confirmation process. The dots are not connected. Only the Board can propose a plan.

To the extent that there was insider trading by bondholders, their good faith is irrelevant to whether the Board is proposing a plan in good faith. And as the Court mentioned up front, if the settlements of the different issuances of bonds are unfair, everyone can go and prove that at the confirmation hearing.

(Sound played.)

MR. BIENENSTOCK: The notion that the expense should not be an issue because so much has been spent on the case in general, I'll actually address more about this in connection with the next motion, but suffice it to say this investigation would be total expense, whereas the expense consumed in the cases has generated multiples of value for the Commonwealth and other creditors. And I'll explain that later.

Additionally, we must realize that there's certainly a plausible possibility that what Mr. Kirpalani and the other

creditors' representatives have said is totally correct. And the people trying to be constructive to come up with a consensual plan of adjustment should not be unfairly made targets with virtually no evidence.

And I've actually pointed out how some of the evidence is wrong. They connect dots suggesting trading during a period when, in fact, the creditors are representing they only traded before and after.

And, finally, National can't resist, it seems, harking back to its contention that the Oversight Board in COFINA was conflicted and could not do its job so it needed independent representatives. As National should and does know, we did that because we thought it was good for the process. But in that very same stipulation, we reserved the right to impose the settlement, and in actuality, when the Commonwealth representative, the Statutory Creditors Committee, backed out of the deal at the end, we did impose it.

So there was no conflict or inability --

(Sound played.)

MR. BIENENSTOCK: -- of the Board to act as National is contending.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Bienenstock.

And now we will return to National's counsel for

rebuttal. I have a total of 12 minutes allocated.

MR. KASOWITZ: Thank you, Your Honor. Marc Kasowitz for National.

Your Honor, it seems as if we've hit a bit of a nerve here. We laid out in our papers, and in the presentation, and in the argument this morning, that there's been massive trading during the period of time covered by the mediation in the bonds that were subject to the mediation, and that those facts gave rise in a number of different places, including in Congress, before our -- before our -- before we made any motion, and amongst the other parties to this proceeding to request for further information.

We made the suggestion in our motion that in order to assure the integrity of this process, the entire mediation and the bankruptcy proceeding, that it would be appropriate to have -- and helpful to have an investigation by an independent party done efficiently and quickly in order to resolve any potential suspicions. The response of the various hedge fund groups are as -- are as follows, and are not -- and are not valid.

LCDC chooses to attack National and National's role on the island, and with respect to this bankruptcy, claiming somehow that the role that it's performed is inappropriate. I don't understand what the potential -- what the possible basis for that can be. National's been a long-term partner of the

Commonwealth. It has guaranteed billions of dollars of bonds for the Commonwealth. It has made payment on those bonds when the guarantees were triggered and the like. So any kind of claim that LCDC makes to try to distract from what National's necessary and vital role for the Commonwealth has been, is really -- is really baseless.

And LCDC also argues that all of -- that all of their trading was fine, but relies on, or necessarily relies on certain unrestricted trading periods and certain purportedly cleansing materials in order to support that. In order to do that, as we have made clear in our papers, all of the -- all of the arguments that LCDC and others have made here, where they say that there have been cleansing materials which have permitted whatever trading that they have decided to do, we've raised the question, properly so, that those cleansing materials have not, in fact, been cleansing, and that there are questions about whether or not what was really discussed, what was really negotiated during the mediation sessions had been properly disclosed in such a way that would protect -- that would protect the trading that followed.

The reality here is that there has been a cloud that's been created by enormous trading during a settlement period, a confidential mediation period, in the very bonds, the values and treatment of which are being discussed in the mediation. And in fact, there's been a run-up in the price of

those bonds prior to the time that the Amended PSA was announced.

That causes suspicions. It's caused suspicions in Congress. It's caused suspicions by others. And we have properly, and in a straight forward, and, frankly, in a restrained way, raised the issue that the entire process and mediation would benefit from an independent investigation now rather than waiting until the confirmation time. And that suggestion, which, if LCDC, Sculptor, QTCB and others had no issue with it, had no concern about the bona fides of their trading, they would have welcomed, if the issues are as cut and dry as they argue that they are here.

Now, QTCB, during the course of its argument, said something that I actually thought was sort of nothing that any other party here has taken a position about. I thought that counsel made the argument, and I'll be corrected if I'm wrong, that it was okay to trade on confidential information, that the Mediation Order and the confidentiality provisions didn't prohibit that trading. I can't imagine that that is a principle that the Court would endorse.

So, you know, from National's point of view, and notwithstanding the efforts by the various hedge fund groups to try to either distract from the matter at hand, or to try to claim that they are being unfairly attacked, which was not National's intention here, our view is that an investigation

done promptly and conducted efficiently would remove the taint that publicly exists with respect to the massive trading that has gone on in bonds which have been discussed during the course of the -- during the course of the mediation. That that is a necessary and important step to happen here.

As to the question of -- as to the point that the Ad Hoc Group of Constitutional Debtholders made to the effect that such an investigation would set an unwelcome precedent for the future, I don't believe, we don't believe, and National doesn't believe that that's the case. This trading has been unusually large, in a concentrated period of time, and under circumstances in which debt that had been viewed at one point prior to the mediation as not having very much value, increased tremendously in the market to have the same value as the early vintage debt.

So we think that there are unique facts here concerning the trading during the pendency of the mediation that necessitate the attention of a -- of a fast and appropriate mechanism and process to remove any taints.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Kasowitz.

Did counsel for QTCB want to come back in and clarify anything, or is there anyone else who wants to say anything? I'll wait 30 seconds for people to announce their names.

MR. MAYR: Yes, Your Honor. You've got Kurt Mayr

here for the QTCB Noteholders Group.

THE COURT: Yes, Mr. Mayr.

MR. MAYR: I would like to address the comment, but I would also pause to let others indicate their interest.

THE COURT: Well, I will let you speak, and then I will pause for others.

MR. MAYR: Okay. I'm not sure how counsel for National came up with the comments that he made. I don't think anything that I said indicated that it was okay for people to trade while in possession of confidential, nonpublic information. And to the extent that anything I said could have been construed that way, that is not what I intended.

THE COURT: Thank you.

Does anyone else wish to be heard further on this motion? I'll wait 30 seconds.

MR. ARRASTIA: Yes, Your Honor. This is John Arrastia on behalf of the Committee.

THE COURT: Mr. Arrastia, please proceed.

MR. ARRASTIA: Yes. Very briefly, Your Honor.

The only concern that I would point out for the Court's consideration is if there is a referral to an investigative authority such as the Securities and Exchange Commission, or the Department of Justice, then the Court loses control over those proceedings.

And if we do proceed toward confirmation, and, for

example, hypothetically, there's a confirmation in 2021, but then there is, again, hypothetically, a criminal or civil -- a finding of criminal or civil liability for improper conduct that comes out in 2022 or 2023, then what we're going to have is questions that will come up after the fact. And as I'm sure the Court is aware, once a referral is made, the Court has less impact and control over its ability to control the process.

Thank you.

THE COURT: Well, if there really is wrongdoing in the market, A, I can't prevent regulatory or prosecutorial agency activity, and, B, even if I had an investigation that did or did not find impropriety, there's always the risk that there might be found some impropriety in the markets, so how is this proposed investigation an effective prophylactic against the possibility that you just framed?

MR. ARRASTIA: Well, I think that -- thank you for the question, Your Honor. I think it appears to be really two related but different issues. And I think that an investigative authority does have certain responsibilities to the marketplace, but I would respectfully suggest that in PROMESA, there's a separate -- a separate concern, which is the integrity of the process and making sure that we proceed through this and through confirmation in the appropriate manner that reflects the fairness, the equity, and the good

faith that's required of the process.

So I think there's two slightly different issues that do have overlap. But, for example, the Securities and Exchange Commission's controlled about the -- concerned about the markets, and whether something happened in the markets, whereas -- and the Court may not have that as an issue before it, but it does have PROMESA, which is slightly different. And I think that there are two slightly different issues, and I think that there's two slightly different considerations, and they don't overlap entirely.

I hope that answers the Court's question.

THE COURT: Thank you. I hear your response.

Is there anyone else who wishes to be heard briefly? I'm going to wait the 30 seconds now.

(No response.)

THE COURT: All right. The 30 seconds are up. And I am ready to rule on this motion. I thank counsel for their submissions and for their fulsome arguments this morning, which were very helpful to the Court.

Before the Court is the motion of National Public Finance Guarantee Corporation for entry of an order directing an independent investigation, Docket Entry No. 14450 in Case No. 17-3283, which I'll refer to as the Motion.

Through the Motion, National Public Finance Guarantee Corporation, which I'll refer to as National, seeks entry of

an order directing an independent investigation by the United States Trustee or "another independent entity" into whether certain participants in the Title III mediation process in 2019 and 2020 violated this Court's orders governing mediation confidentiality, including whether those parties traded in securities while in possession of confidential information about or obtained during mediation.

The Court has jurisdiction of this contested matter pursuant to Section 306(a) of PROMESA. The Court has considered carefully all of the parties' submissions in connection with the Motion.

For the following reasons, the Motion is denied. The Court reserves the right to make non-substantive changes and corrections in any transcription of this oral decision.

Neither PROMESA nor any provision of the Bankruptcy Code that is incorporated into Title III explicitly authorizes this Court to initiate an independent investigation along the lines of the investigation sought by National. There is, similarly, no statutory or other authority granting the Court the power to direct the United States Trustee, which is part of the United States Department of Justice, to conduct such an investigation.

In fact, Congress excluded from PROMESA both Section 1104(c) of the Bankruptcy Code, which provides for the appointment of an examiner to investigate "allegations of

fraud, dishonesty, incompetence, misconduct, mismanagement or irregularity in the management of the affairs of the debtor," and Section 307 of the Bankruptcy Code, which authorizes the United States Trustee to "appear and be heard on any issue."

Against this statutory backdrop, National relies on Section 105 of the Bankruptcy Code, which is made applicable in these Title III cases by Section 301(a) of PROMESA as the principal legal basis for its motion. Section 105(a) provides that the Court, "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of" the Bankruptcy Code, and since it's incorporated into PROMESA, that would be with respect to PROMESA as well.

The Court's equitable power under Section 105(a) is not unlimited, however. As the First Circuit has held, Section 105(a) may be invoked, "only if and to the extent that the equitable remedy dispensed by the Court is necessary to preserve an identifiable right conferred elsewhere in the Bankruptcy Code." I am quoting from *In re: Jamo*, 283 F.3d 392, at 403, a First Circuit decision from 2002, and I omitted citations.

Here, as noted, Congress did not incorporate into PROMESA the Bankruptcy Code provision allowing for the appointment of an examiner, and National has identified no other right under the Bankruptcy Code that it seeks to preserve through its motion.

The Court concludes that Section 105(a) is, at best, a weak source for authority to take a particular action that Congress has expressly denied the Court authority to take, especially one involving an entity, the United States Trustee, whose role in these Title III proceedings is limited.

To the extent that the Court does, in fact, have the power under Section 105(a) of the Bankruptcy Code to order an investigation into the allegations here, the Court declines to exercise any such discretionary authority to do so. National has not proffered evidence sufficient to support a reasonable inference that any participant in the Title III mediation process has traded on inside information to the detriment of counterparties or the market, much less to the detriment of the Title III and mediation processes.

The charges advanced in connection with the Motion are sensational and largely speculative, particularly insofar as they purport to show a problem undermining the integrity of these proceedings, as opposed to possible misconduct in the securities market. With respect to the latter concern, the Court has no relative advantage over prosecutorial and regulatory bodies when it comes to initiating an investigation into National's allegations, and it is not appropriate to burden the Commonwealth's already challenged resources to bankroll a speculative venture because certain creditors want to have more ammunition for potential challenges to an

eventual plan and its proponents.

If National develops information that would support a colorable challenge to the voting or economic position of an entity identified in National's motion, or any other party in interest, National will have ample opportunity to commence specific motion practice in connection with proceedings concerning the Plan. For these reasons, National's motion is denied.

For similar reasons, the Court declines the Official Committee of Unsecured Creditors' offer of its investigatory services, which are expensive and would be cast into shadow by its own strategic priorities.

To be clear, the Court takes seriously all allegations of improprieties, including those at issue here, and is deeply concerned that all of the proceedings in the Title III cases and the mediation be fair and appropriate, and be seen as fair and appropriate. In this instance, however, law enforcement and/or regulatory agencies are better suited to investigate the existence of any misconduct and its impact on transaction counterparties and bond markets than the Court is.

The Court will, therefore, focus its deployment of the limited judicial and debtor resources on moving these cases forward toward the confirmation or rejection of proposed plans of adjustment and litigation in that context. The

motion is denied, and the Court will enter an order reflecting this decision.

We will now take a break until 11:20, and then I will hear argument on the PSA motion. All participants must disconnect from the Court Solutions lines and call back in time to resume at 11:20.

Thank you very much. I look forward to resuming shortly.

(At 11:06 AM, recess taken.)

(At 11:31 AM, proceedings reconvened.)

THE COURT: This is Judge Swain speaking.

MS. NG: Yes, Judge. It's Lisa.

THE COURT: Very good. Again, good morning, everyone. We are now ready to turn to the PSA Creditors' motion to impose deadlines for plan of adjustment, which is Docket Entry No. 14478 in Case No. 17-3283.

I note before we begin the arguments that, despite the press reports, I have not yet made a formal ruling on this motion. I shared what I shared earlier about my inclinations, which are fairly strong, in order to afford the parties notice of what I am thinking and what I'd particularly like to hear about in connection with the arguments.

We have 60 minutes in total allocated for the arguments. And first up is counsel for the LCDC, Mr. Kirpalani, for ten minutes.

MR. KIRPALANI: Thank you, Your Honor. Susheel Kirpalani of Quinn, Emanuel, Urquhart & Sullivan on behalf of the Lawful Constitutional Debt Coalition.

Judge, we are obviously one of the movants in the joint motion of the PSA Creditors seeking to impose plan-related deadlines on the Oversight Board in this historic case. I think Your Honor knows we were one of the original anchor tenants of the initial PSA, and we are an anchor tenant of the last Plan of Adjustment filed by the Board. And we have been working very hard since the inception of this coalition to find a viable path forward for the Commonwealth of Puerto Rico.

I'm not going to go through a lot of the arguments that are already set forth in the papers in light of Your Honor's ruling this morning. And I was hoping perhaps instead, if I could focus my remarks on Your Honor's inclinations that were announced at the outset. I just think it's a better use of Your Honor's time.

Judge, we've been working with Mr. Bienenstock and Mr. Rosen, as well as their investment bankers and their municipal bankers at Citibank for years. The Court knows very well that we have been -- and including some of the members of the LCDC who were participants in the COFINA Title III case, and the reason I reference it is two-fold. First, the Oversight Board is very proud, as it should be, as should

AAFAF be, of the historic restructuring of 18 billion dollars of sales tax bonds that shaved six billion of them off and saved the Commonwealth and the people of Puerto Rico hundreds and hundreds of millions of dollars of bond repayments.

And that structure, despite still being unrated, is doing very well, and I think it's one of the true gems and success stories of the case. And while they say that success has many parents, the truth of the matter is, Judge, that the COFINA deal happened. It happened in the timetable that occurred because of this Court, not because of any of us. It was the Court.

And I actually went back and looked at this in preparing for today's argument. The Court had issued an Order. It was in the nature of a stipulation, but it had the force of a Court order. It was a so-ordered stipulation. And that Order had not just the agents being delegated authority, but it had deadlines. The deadlines were really tight right at the outset of these historic cases.

And then the twin hurricanes occurred and the deadlines were pushed out a little, but there were still deadlines, because I think the Court knew, and all the participants knew, that deadlines make progress. And that's what we're asking for here.

We didn't -- we apologize if the motion appeared Draconian, but perhaps that may be because Your Honor doesn't

realize just how close the parties remain on the overall restructuring terms. I'm not going to go into anything in mediation, of course, but the PSA has not been terminated. Two proposals were disclosed publicly. The gap between those proposals is really not insurmountable. And rather than have a deadline imposed on a mere term sheet, Your Honor, these term sheets, which Mr. Rosen and I have worked on together for many years, have gotten so detailed that they are, for all intents and purposes, an entire plan.

And the Oversight Board already has a plan. Even if it changes -- let's say the Oversight Board says, I'm not going to go with what's in the PSA, we're going to go and do something else. Whatever they do, they have all of the frameworks, definitions, et cetera, laid out in a plan and a disclosure statement. It won't take them three and a half months to put a term sheet together.

And what I would urge, Your Honor, is that -- to look back at the COFINA stipulation that had actually a 45-day deadline. After the agents reached an agreement on a compromise, the Oversight Board was compelled to file a full plan, not a term sheet for a plan, a full plan within 45 days. So they complied with that, and we got COFINA restructured and out of bankruptcy.

And so here, Your Honor, the two things I'd like the Court to consider is if February 10th is what Your Honor

thinks is an appropriate period of time for the Oversight Board to -- frankly, to fish or cut bait on the PSA that no one yet has terminated, despite many missed milestones, but if that's the period of time that the Court believes is prudent and appropriate, you know, we are not going to disagree with the Court's judgment on that.

What we would ask you to reconsider, however, is that it shouldn't be a deadline for a term sheet. A term sheet is really not to an operative document. It doesn't advance the case at all. And they -- the Oversight Board has all the tools it needs to file a new plan.

And I would imagine that Mr. Rosen and Mr. Bienenstock could easily provide a plan to the Court. They even noted in their pleadings that they're working on something right now and they will be in a position to file it. So having -- and I think they were referring to something earlier than February. But having a deadline in place is important because of the discipline that we believe the case so sorely needs, but it really should be a deadline that is for an actual legal, binding document, like a plan, not a term sheet.

And so if the Court thinks February 10th is appropriate, that should be the deadline for the Oversight Board to file a plan and disclosure statement, together with proposed moving forward dates. Because the other point to

make here, Your Honor, is that filing a plan, even a plan itself, doesn't really advance the case. We've had one on file for eight months. Not being critical about all the things that have happened, we have to take notice of them. It's affecting life all over the world. But having the additional deadlines, when do people get to see a disclosure statement that's been approved by the Court? When do people get to vote on that, up or down? And when does Your Honor get to decide up or down, whether it meets the requirements of PROMESA? Those subsequent deadlines are, frankly, even more important than the first deadline.

So if the Court could consider our timetable and adjust it, we would greatly appreciate that, Your Honor. And other than that, I'm here to answer questions. Like I said, I've kind of thrown away my entire script, because I think the Court correctly concluded, you have jurisdiction. We're not attacking the fiscal plan. There's no need for me to go into that.

THE COURT: Well, I thank you for your adaptability and for those remarks. I don't have questions for you. At this point, I'd like to hear from other speakers, and so I will turn to Mr. Stancil for the Ad Hoc GO bondholders.

MR. STANCIL: Good morning, Your Honor. Mark Stancil for Willkie Farr for the Ad Hoc GO Group.

I don't have a lot to add to Mr. Kirpalani. We

would, likewise, support that proposed modification to Your Honor's indication, I would say, you expressed earlier today. I think I would just add one more reason that I think is mentioned in our motion, but I think it would be very helpful in expediting the process generally and clarifying the path forward to make that a plan and disclosure statement deadline instead. And that is, as Your Honor is aware, there is -- and we find this in the footnotes of our filings -- there is a question as to whether we would need to seek some sort of enforcement remedy under the PSA, and a term sheet might leave us with a little bit of disconnect perhaps between whether whatever the Board is proposing in the way of a term sheet is, in fact, consistent with the PSA, or not something permitted by the PSA existing.

And so I think it will just help everybody's discussions and evaluation if we're doing an apples-to-apples comparison of what I would say is the current PSA and whatever -- the current plan, pardon me, and whatever may come out of this process. So we support Mr. Kirpalani's proposed modification, and I think, you know, this will help everybody communicate more effectively and hopefully more consensually.

THE COURT: Thank you, Mr. Stancil.

I will now turn to Mr. Palmore for the Constitutional Debtholders Group.

MR. PALMORE: Thank you, Judge Swain. Joseph Palmore

of Morrison & Foerster for the Ad Hoc Group of Constitutional Debtholders.

Our group is not a frequent visitor to the podium in this case. Our decision to join this motion and appear here today shows how critical we believe this matter is, and that it's critical that these Title III proceedings be put on a path to completion.

We appreciate the Court's indication that it is inclined to impose a deadline, but I would associate myself with the remarks of Mr. Kirpalani and Mr. Stancil, that we believe that the deadline should be for the filing of a plan and a disclosure statement.

Term sheets, we assume that by a term sheet, the Court would mean something that was sufficiently detailed that parties, all parties could understand what was being proposed. And I would submit that the delta between a meaningful term sheet and an actual plan and disclosure statement is not significant enough to forebear from making this deadline for the filing of a plan and a disclosure statement.

That's a legally operative document. And then with meaningful deadlines behind it, we think that would be the best course to take us on the path toward completing these proceedings.

If the Court has no other questions, I'll yield the balance of my time.

THE COURT: Thank you, Mr. Palmore.

I'll turn now to Mr. Mayr.

MR. WILLETT: Good morning, Your Honor. It's Sabin Willett, actually, from Morgan Lewis. I'm handling this one for the QTCB Group.

THE COURT: Hello, Mr. Willett.

MR. WILLETT: Good morning. I don't have much to add either.

Mr. Kirpalani explained that deadlines are a really handy tool in a lawyer's toolbox, and they help us explain to our clients why we need to focus on this problem today and not later. The question, I guess, that's left is what sort of deadline, for a term sheet or a plan.

And I think you've heard everything I might say about why a plan deadline will be more practical here. The only point I'd emphasize is that I think everything you've heard from us will apply just as equally to Mr. Bienenstock. And I have no doubt that he will pursue vigorously and in good faith, but he has a client, too. So if you arm both his side and the creditors' side with that tool, we will be able to all move the case much more promptly.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Willett.

And so next up is the Oversight Board, by Mr. Bienenstock, on my list at least. Remember you have to

unmute both your computer and your phone.

Mr. Bienenstock? I can't hear you yet. I'm hearing somebody.

MR. BIENENSTOCK: I'm sorry. Can you hear me now, Your Honor?

THE COURT: I can hear you now. Thank you.

MR. BIENENSTOCK: Okay. Thank you. Martin Bienenstock of Proskauer Rose, LLP, for the Oversight Board, as the Commonwealth's Title III representative.

Your Honor, first, thank you for letting us know about your preliminary thoughts on this motion at the outset of the hearing today, because it enabled us to contact our client. So let me first address that, and then some of the issues raised by the creditors orally, and one or two in their papers.

As far as the February 10 deadline, the Oversight Board can definitely file a proposed term sheet by February 10, 2021, and perhaps significantly earlier than that. The term sheet would be based on the current certified Fiscal Plan.

If it turns out that, due to the change in membership of the Oversight Board, or other factors, that a new fiscal plan is required, then the new fiscal plan would be unlikely to be certified before April or May, which would make it highly impracticable, if not impossible, to file a term sheet

before the new certified -- the new fiscal plan is certified. And if that happened, we would obviously -- if that situation is arising, we would obviously come to the Court and explain the situation.

In respect of the -- I think the sole issue that's really been raised by the creditors this morning is they would prefer to have a full plan and disclosure statement rather than a term sheet. I would first say that is doable for the reasons that Mr. Kirpalani gave. But having said that, that's probably not -- should not or we would prefer that not to be part of the order for the following reason: If it turns out that we bury the terms of the existing proposed plan and do not have constituencies signed on to the revision, then when we file the term sheet or plan disclosure statement, we would be asking the Court for time to further negotiate to see if support can be -- can be obtained. And then it would obviously require some tweaks to whatever we file, and then it would make most sense efficiently to then do the new plan and proposed disclosure statement.

If we already have support when we file a revised proposed plan, then it would make perfect sense to file the actual documents, as opposed to the term sheet, but we don't know now which situation we're going to have. So we'd like to have the flexibility to do what makes most sense at the time.

In terms of some of the comments in the creditors'

papers, the one point I'd like to make, because I think in -- as Your Honor can tell, the GO Creditors making this motion and the Board have a lot of commonality in that each side, for some of the same and maybe some different reasons, wants to get on with this and wants to get the debt restructuring done to enable Puerto Rico to regain market access. From the Board's point of view, and obviously from the creditors' point of view, it's better -- time is money, and we get that.

And where we differed from the Draconian consequences -- and let me just make clear that nowhere in our papers did we ever suggest the Court did not have the power to give us a deadline, failing which the Court would dismiss the case. It's that we concluded the same as the Court, that that would be a fairly Draconian remedy that would not benefit the people of Puerto Rico, to say the least. And so we were objecting to the remedy, not the Court's power.

Our views on the Court's power over the Fiscal Plan are well-known, and I don't have to get into that. But the other theme in many of the creditors' pleadings is that there's been no progress. And I think any of the creditors would -- and these are highly sophisticated investors, probably the best in the world. If they were presented with an investment where they could get five to ten times their money in a few years, they would all be delighted, because that's not the average rate of return.

So while they -- they refer to 650 or 800 million dollars as the cost of these cases, and I know it always makes a good newspaper headline, you know, what the professionals are being paid, you know, the Board, AAFAF, the committees, et cetera, when one sits down and says, well, let's see what's been accomplished, the Commonwealth had obligations of what the ERS Bondholders said to the First Circuit were in excess of two billion -- I think they even said five billion, but it's two to three billion -- to take money to pay to those bondholders if they were going to pay pensions. And the Commonwealth, subject to a certiorari request that's pending, the Commonwealth has been relieved, because of the Board's efforts, of that two to three billion dollars.

From the GO Creditors point of view, it's in process, but based on the Court's ruling that the monolines hadn't made a colorable case that they had claims against the clawback revenues at the Commonwealth level, with HTA due to receive roughly five billion of that, and PRIFA about another two billion, and CCDA half a billion plus, that's another seven and a half billion dollar savings that is money that is available to the Commonwealth and debt service that would otherwise not be available.

The Commonwealth's litigation so that municipalities would pay for their own retirees, saving over 200 million a year, you know, over a period of five years, that's a billion

or more. So add it all up. And for the price of 650 or 800 million dollars, the Commonwealth, and particularly the GO Creditors, have saved over eight billion.

And I say this because I think that most graphically illuminates the fact that this is not a case where there has been no progress. It was kind of Mr. Kirpalani to point to COFINA, and then there was GDB, and then there was all the savings in the Fiscal Plan that the Board has accomplished, and the structural reforms it has both partially accomplished and partially needs to enforce going forward, but great progress has been made that you can identify in hard numbers.

And I don't think any -- as I said, any of the hedge fund creditors typically invest where you get ten to one on your money, or even five to one, or three to one for that matter. So this is not a situation where this is a draining expense that's not producing value. It's producing so much value, it offsets the expense by multiples.

But that said, I'd like to go back to the fact that we are not far in spirit at all from where the creditors are coming from. We want to get on with the restructuring. As I said, we may well file a term sheet or entire plan before February 10. It's certainly -- if we can, that's what the Board wants to do. But if we end up filing something without creditor support, then we're probably going -- almost certainly going to be asking the Court to defer the -- what

will definitely be, you know, a litigation explosion on confirmation in terms of discovery, et cetera, notwithstanding everything that's gone before, while we see if we can convert whatever we file into something that has creditor support, if we don't start out with that.

And unless the Court has questions, those are the only remarks I think are relevant anymore, given the Court's suggestion.

THE COURT: Thank you. Before you sign off, I want to make sure that I understand your scenario. So it sounds as though you would be comfortable with my saying, there must be a term sheet at a minimum, and preferably an amended plan and disclosure statement, no later than February 10th, 2021. If you file it as a term sheet, it will likely be because you haven't garnered your critical mass of support yet.

As I said before, when I gave the heads-up this morning, I said that in addition to the term sheet, I would require you to file a specific proposed schedule for getting to disclosure statement consideration and any associated discovery or litigation solicitation confirmation proceedings. So in the scenario where you say you have the Board's proposal without the critical mass of support and, therefore, you haven't filed a full amended plan and disclosure statement, would you then anticipate that your proposed schedule would include some sort of specific period during which you seek to

garner that support, and at the end of which you must file the proposed plan and disclosure statement no matter what, and then the remainder of the litigation schedule?

(Sound played.)

MR. BIENENSTOCK: With one -- Your Honor, with one caveat, I think the answer is yes, although the words, the phrase "no matter what" are a little bit scary, but --

THE COURT: We have to move --

MR. BIENENSTOCK: But the caveat is this, as I mentioned: If the Board determines it has to change the Fiscal Plan and so that any term sheet based on the existing one would potentially be moot or ineffective, then I would propose that we simply come and tell the Court that and what the situation is.

What I've said already is it would likely be that a new fiscal plan could be done by April or May. But whatever it is, we'd like some sort of provision where we can tell the Court, so that if it just doesn't make sense to do it by February 10, if we already know that we have to change things, we could explain the situation to the Court and make a recommendation as to what makes most sense in those circumstances.

THE COURT: So you wouldn't anticipate saying this is a term sheet reflecting the plan as we would propose to put it forward; it would require changes in the Fiscal Plan; that

process will take X period of time; therefore, here's our timetable that includes revision of the Fiscal Plan, and then the Plan and Disclosure Statement, so on and so forth? Why can't you tell me that?

(Sound played.)

MR. BIENENSTOCK: Well, I just want to make sure, Your Honor, I understand. If we're going to change the Fiscal Plan, we may not know -- like, for instance, if in December or January we knew that the membership of the Board has changed and the new membership wants a new fiscal plan, we won't know necessarily what the new debt sustainability is going to be until that plan is done. So it would be difficult to file a term sheet.

Now, I suppose it's possible that we would know where we're heading, but that will depend on the thoughts of the new Board members that we can't today predict. So what I'm saying is we're fine filing a term sheet or a plan by February 10 based on the existing fiscal plan, and providing, as the Court mentioned, a proposed schedule for further negotiations, if necessary, discovery, disclosure statement hearing, et cetera, voting, et cetera. But if we have to change the fiscal plan and we don't know what those changes are going to be in advance, then I'm saying we'd like the opportunity just to tell the Court that's the situation we're in, and we'll need until April or May until we know what the -- what the terms of

that plan could be.

THE COURT: Thank you. That's clearer for me.

I think what I would be inclined to do is two things: First of all, even with the February 10th proposal, I would still expect the periodic status reports, including the December 4th status report that you had proposed to file, so that we're not in a complete black box between now and February. My inclination would be to have a schedule that requires the filing by February 10th. And maybe that's a schedule that requires, at a minimum, a term sheet, though preferably a plan and disclosure statement with a proposed schedule.

And so that means that if you don't believe that you can make that deadline because of the need for a change in the Fiscal Plan, you would have to, in a status report or by motion, which probably would make more sense, ask for an alteration of that schedule for the specific reason that the new Board wants to revisit or needs to revisit the Fiscal Plan, and tell me the specific changes that you would want to make in my timetable.

I would rather not have a timetable order that has if-then statements that might be triggered on less than the full clarity that we might be able to get as to the reasoning for it under a structure that would require a specific request for an alteration in the schedule. I hope that makes some

sense.

MR. BIENENSTOCK: Yes. Your Honor -- Your Honor?

THE COURT: Yes. Yes.

MR. BIENENSTOCK: Oh, I don't know if Your Honor heard it, but there was a voice that I heard that came out of the blue. But anyway, I did hear what Your Honor said, and that all seems workable from the Board's point of view.

THE COURT: Thank you, Mr. Bienenstock. And I hope the disembodied voice doesn't interfere too much.

Okay. Now I will turn to Mr. Friedman for AAFAF.

MR. FRIEDMAN: Good morning, Your Honor. It's Peter Friedman from O'Melveny & Myers on behalf of AAFAF.

I think, largely, I have the same view as Mr. Bienenstock. Overall, I do want to note that, as we did in our papers, cataloged, the last four years cannot be properly characterized in stasis. There's been a lot of success, been a lot of obviously spectacular challenges, both natural -- there have been some, you know, obviously, frustrations, but there has been a lot of progress overall.

Mr. Kirpalani talked about COFINA, and I think that one of the important lessons about COFINA in terms of going forward on any time line, but especially one that is expedited, is that the government and all parts of the Puerto Rico Government, from the executive branch to the legislative branch, were on board and able to do the things that have made

COFINA a highly successful credit, one that, as Mr. Kirpalani points out, isn't rated but is a par -- really is a par security.

And there was legislation. There was the stand-up of a new entity with -- you know, and there was a lot of cooperation, in part because the government's needs were met in that case. Congress provided confirmation protections, the good faith requirements of the Plan, wrote designation, equitable subordination rights. And so what -- however things move forward, it's going to be critical for AAFAF and the next Puerto Rico Government to be involved.

And obviously, as we mentioned in our status report, AAFAF is extremely committed, at the direction of the Governor and AAFAF's leadership, to being cooperative with whomever emerges as the winner next week. There will be a new governor. We don't know who it is, but AAFAF is already preparing for a transition, as are other branches of the government.

Given that -- the deadline the Court has imposed, we'll obviously have a substantial amount of work to do even before the next governor is inaugurated on January 1st, to make sure that that governor and his administration is prepared to be able to work with the Board and stakeholders in order to be in a position either to, you know, be on board with the Plan, or if it's not, to be prepared to, you know,

make clear what its needs would be in order to have -- to be able to support a plan.

You know, that plan, I think as we highlighted in our papers, whatever it is may not be something that creditors all want. I think we cataloged some of the overly optimistic assessments that creditors may be making about cash on hand, or the SSI decision, or the effect and immediacy of FEMA aid and what effect those might have. So the government may continue to have concerns about the projections or projected uses of funds. We'll obviously continue to communicate those to the Board and creditors, but overall -- and I guess the last point I'd make, Your Honor, is that we do think that some flexibility is necessary, along the lines that Mr. Bienenstock pointed out, not only are there going to be some new Board members, there will be, as you know, a new governor.

That governor will have to engage in a fiscal plan process for the first time. As the Court knows, that's, I think, a highly involved process. And so if there is some kind of new fiscal plan, we can assume that fiscal plan may take some work from the government's role. It's a role the government has always taken seriously and put a tremendous amount of effort into, and a tremendous amount of dialogue with the Oversight Board. And if the Oversight Board is going down the path of a new fiscal plan, the government's -- you know, I know how this government --

(Sound played.)

MR. FRIEDMAN: -- takes its fiscal plan responsibility, and we assume the next government will take it equally seriously.

So that's really the sum total of my remarks, Your Honor, and I appreciate the time to address the Court this morning.

THE COURT: Thank you, Mr. Friedman.

Next I have Ms. Miller from Ambac for five minutes.

MS. MILLER: Good morning, Your Honor. Atara Miller from Milbank on behalf of Ambac.

THE COURT: Good morning.

MS. MILLER: Your Honor, before I -- good morning. Before I address your proposal for resolving potentially this motion, I just want to make one quick point, because a lot has been made by a number of parties, including Mr. Kirpalani and Mr. Bienenstock, about the fact that no party has yet terminated the PSA. And as Your Honor knows, there is a hundred million dollar breakup fee in the PSA. But that fee is payable to the creditors if they terminate only if the Oversight Board actually modifies the treatment of the GO bonds in an amended plan. And hence, the sparring about whether the deadline this Court sets be to file a term sheet or to actually file an amended plan.

And Mr. Bienenstock's sort of spar back was, we'll go

forward and file something, but you won't be happy with it, because it's going to be based on the current Fiscal Plan. And we've already seen the Oversight Board's proposal and term sheet under the current Fiscal Plan. So this motion, as much as anything, is really about forcing the Oversight Board to either move forward with this sweetheart deal for the PSA Creditors, or to come clean and formally modify the GO bond treatment, allowing the PSA Creditors to terminate, line their pockets with a hundred million dollars of the Commonwealth's money, and then go back to the table and negotiate a new deal.

Your Honor, as we've said often, we think that the best path forward for Puerto Rico is through a consensual deal. And we urge the Oversight Board, as Your Honor suggested in your opening remarks of this hearing, to constructively engage during this time with all creditors in an effort to arrive at such an arrangement. And we urge the Oversight Board and its new members to use the opportunity that this time would allow to critically review its Fiscal Plan, as Mr. Bienenstock suggested. Some of the new members of the Oversight Board might want the reasonableness of the assumptions and projections, including based on actual performance, the Commonwealth's cash position, to audit the pension claims and then reengage with all creditors to build consensus.

And Mr. Kirpalani, in his remarks, credited this

Court and the deadlines that Your Honor set for the success and speed of the COFINA deal, which we certainly believe and agree had an important role to play. But another key component, which is one that Mr. Friedman alluded to, was the ability to build consensus. Having everybody, all interested stakeholders around the table, including the Oversight Board and the favored creditors, deciding that it was better to compromise to reach a largely consensual deal that could then move expeditiously to confirmation.

And the deadlines that Mr. Kirpalani referred to both this morning and included in their motions are only viable in a world like COFINA, where there's a plan supported by all major creditors. If we don't have that, we're going to end up in the world that Mr. Bienenstock referenced, which is -- I think he described it as an explosion of litigation leading up to confirmation.

That is going to be a very long, painful, and expensive process for Puerto Rico, and one that will leave it reputationally battered and hard pressed to regain access to the capital markets, including, in particular, through revenue bonds, which often provide the most cost effective means of raising capital for municipalities.

So we agree with --

(Sound played.)

MS. MILLER: -- Your Honor. I think you said there

has to be a time that -- the time is now. And that we all start moving forward, and we hope that we can do it constructively and consensually, to put Puerto Rico back on its feet for now and well into the future.

Unless Your Honor has any questions, thank you.

THE COURT: I don't at this point. Thank you, Ms. Miller.

Next on my list is Mr. Despins for the UCC for five minutes.

MR. DESPINS: Good afternoon, Your Honor. Luc Despins with Paul Hastings on behalf of the Committee. I'll be, I think, shorter than five minutes.

Obviously the Committee supports the denial of the motion. As to the other aspects that are being discussed, you know, the Committee is obviously in favor of, you know, the engagement by creditors in negotiations, but as we pointed out in our Response, you know, we have practically not been involved since January. And then we were involved just to be told of the result of the negotiations.

And now we see in the term sheets that are now public that the Board and the creditors have agreed that -- as a grand total of 50, 5-0, million dollars, that will be available to Unsecured Creditors, which is, you know -- so it's difficult to see how this is going to play out, meaning that's the only thing that they've actually agreed on, that we

would get 50 million dollars.

Of course, we were never involved in those discussions. And so are we going to be involved in the renegotiation of that point, or that's already a fait accompli? Don't know.

In that regard, I would note that both the Board and Bondholders judiciously avoided any -- addressing the questions that we raised as to who knew what and when, when the Court was considering our two motions. And, in fact, the Bondholders in their pleading, Docket No. 14666, actually confirmed that there were no negotiations going on at the time of the September -- sub 16th, or something like that, hearing.

So, you know, the bottom line is we're happy to engage in constructive negotiations, but we are a little bit concerned that this may not happen unless the Court directs specifically that this happens with respect to the Committee.

Thank you, Your Honor.

THE COURT: Thank you.

Now for the ERS bondholders. Mr. Rosenblum, for two minutes.

MR. ROSENBLUM: Good afternoon, Your Honor. Benjamin Rosenblum from Jones Day on behalf of the ERS Bondholder Group.

We are in favor of moving these cases forward. However, we don't support the current plan, and we don't

support that moving forward. As with others, we are very much in support of a more consensual and implicit process here. I want to emphasize that nobody had talked to the ERS Bondholders about a plan on the merits for well over a year, and we would appreciate having those conversations.

Briefly, with respect to some of Mr. Bienenstock's remarks, we take issue with the boasting or positive spin about the litigation that the debtors have initiated against various of the creditors, including the ERS Bondholders. I also disagree with the characterization or suggestion that litigation has somehow led to the resolution of the ERS Bondholders' claims, or whether that focus on litigation has actually led to the advancement of these cases.

As evidenced by the numerous adversary cases commenced by the debtors against the ERS Bondholders and others, there clearly is no resolution of our claims against either the Commonwealth or ERS. I'm encouraged by Your Honor's opening remarks encouraging parties to engage in good faith negotiations. And I just want to express that the ERS Bondholders hope that we get an opportunity to be part of those discussions.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Rosenblum.

And before we go back to Mr. Kirpalani, I'd ask Mr. Bienenstock whether he wishes to respond to any of the

concerns that have been expressed regarding broader collaboration in negotiations toward the Amended Plan, which is, as others have noted, something that I expect.

So, Mr. Bienenstock, did you wish to say anything further?

MR. BIENENSTOCK: Sure. Your Honor, Martin Bienenstock of Proskauer Rose, LLP, for the Oversight Board as Title III representative for the Commonwealth. And thank you, Your Honor, for giving me the opportunity. So I'll keep -- I'll keep the privilege very short.

As a general matter, the Oversight Board, of course, wants to maximize agreement to the plan from all constituencies. Hypothetically, if a constituency basically lets it be known that it's really not willing to discuss anything that's any distance, any measurable distance from payment in full, we know that that's a waste of time. So constituencies that fall into that category, you know, we just know, and we assume the mediators know, but whether they do or not -- that's not anyone's useful allocation of time. But to the extent that reasonable discussions can be had, of course we want to have them with all possible constituencies. And we've had them with Retirees, with Unions, with PBA Creditors, and with different tranches of the GO Creditors.

Now, I know, for instance, that the General Creditors Committee, it's one of the parties this morning that, you

know, basically is requesting a seat at the table, not as if, you know, we don't -- we haven't spoken to them, and lines of communication are always open. But, as Your Honor knows, they're also the ones who are currently asking the First Circuit to expedite their appeal of their -- the timing of their ability to attack the GO priority.

Now, we are all, I guess, experienced enough, sophisticated enough, and have a large enough sense of humor to know that we can talk to one another even if simultaneously one of the parties is taking a position in the Court that would torch all the other arrangements that we've made. But -- so while yes, we do -- we will -- I can commit to this: We will at least touch base with all the major constituencies who have spoken up, and if there's any even modest likelihood of reaching an arrangement, we will pursue it.

To the extent it becomes clear, and sometimes it becomes clear very fast, that there's -- there can be no meeting of the minds because there's just too big a distance, you know, I can't say that we're going to ask the mediators or some such thing to create a whole big mediation with such parties if we know in advance we're just too far apart. But we are also -- we all have enough gray hair and experience to know that sometimes the biggest distances and hardest positions, at one point in a case, somehow transform. And so we're not going to write anyone off. And we are optimistic

and open, but we're also going to be practical.

I hope that responds to what Your Honor was asking.

THE COURT: Thank you. I will just say that I will expect, and will probably say something to this effect in writing, that negotiations during this period are expected to be ones in which the Oversight Board and all relevant stakeholders will act in good faith and responsibly toward the goal of, as I articulated, the goal of a substantially consensual plan. You can hear that as consensual as possible, as broad support as possible, but that is so terribly important for efficient progress and for progress that redounds to a good result for creditors and for Puerto Rico.

So I thank you for your undertaking, Mr. Bienenstock, and for the willingness that other stakeholders here have expressed to work in good faith toward a plan design with broader support.

So with that, I return to Mr. Kirpalani.

MR. KIRPALANI: Thank you, Your Honor.

So a few reactions, and perhaps a little bit of context. First, Mr. Bienenstock mentioned that the Oversight Board is changing over or potentially changing over some members, and there may need to be a new opinion on a fiscal plan in, you know, the late first quarter or early second quarter of 2021.

The point I wanted to make here, Judge, is that

there's a fiscal plan that's done every year. A fiscal plan is done for a 30-year period of time. And it's hard to sit and hear statements about a fiscal plan having a dramatic impact on whether a plan of adjustment should go forward or not go forward, because, like I said, it changes every year. Whereas new bonds that are going to be issued go out for decades.

And so just because there's a new fiscal plan, it doesn't mean that there would necessarily be a new plan of adjustment. If that were the case, we would never have finality in the Title III case at all.

To give some context, and this is in our papers, it's really important to kind of grasp this, and I don't think anybody has really tried to walk the Court through it. The COFINA deal also impacts the fiscal plan, right? But the COFINA deal used up about, I'm using very round numbers, 500 million dollars a year. So of own-source revenues, if you include COFINA assets as part of the own-source revenue, under the 2020 Fiscal Plan that was filed by the Board, there's about 15 billion dollars a year of own-source revenue. Fifteen billion.

And under our new PSA, 1.5 billion, again, round numbers, of the 15 billion for 2020, but it's 1.5 billion per year would generally be consumed by COFINA, plus new GO Bonds. That's it. 1.5 billion.

And where we are with the Board right now, from the public disclosures, is they brought that number down quite dramatically. We tried to meet them somewhere in the middle, and we'll see what the Board decides to do in the future.

The point of this, though, Your Honor, is that we are talking about roughly nine percent or so of the own-source revenues per year for 30 years that would be dedicated to debt service. So when Mr. Bienenstock says, well, there may need to be a new fiscal plan that changes the debt sustainability, it just doesn't necessarily add up that way, because 90 percent plus of the fiscal plan is used for other things that have nothing to do with debt service.

And so while we are here --

(Sound played.)

MR. KIRPALANI: -- trying to ask the Title III Court to help us restructure Puerto Rico and get out of bankruptcy, the Board takes the position, we can't debate the Fiscal Plan. Fine. We've lived with that. But then they can't say, well, the Fiscal Plan is the reason why we can't actually do the debt restructuring, because it doesn't add up, not legally, and not as a matter of actual math. So I wanted the Court to understand that.

The second thing, Judge, is that I didn't hear Mr. Bienenstock actually disagree that he could file a plan by February 10th. I think we all know how good the lawyers are

at Proskauer. We've seen the volume of paper and the sophistication of the transactions that they can implement. And as I said earlier, and I think the other PSA Creditors support this as well, whatever plan the Board wants to move forward on should be the plan that they file by that date.

They can file the term sheet earlier if the Board believes it's prudent, from a case management perspective, to put a term sheet out, have parties reengage. We welcome all of it, all of it. But to have a deadline of February 10th, when it's only October 28th now, to just put a term sheet out, and then perhaps have a plan process begin at that point, we will be just watching the island continue to stockpile cash while GO Bondholders, which have the highest constitutional priority, are left unpaid, and every other current expense of Puerto Rico is paid.

Now, we get it. There are certain things that we can try to push and certain things we can't try to push. We didn't want to. We wanted to compromise what our rights are and accept haircuts that would enable pensioners to be treated fairly and essential services to be paid. But the delay upon delay, without any actual end in sight, is why we felt compelled to file the motion.

So I think, Your Honor, the Board should file a term sheet soon, sooner than February 10th, if that's their proposed course of action. February 10th should be the

deadline for a plan and disclosure statement that gets the ball rolling. And hopefully, Your Honor, what the Court said, on May 17th, I think it was, 2017, that, you know, we will see an end to these cases. Failure is not an option. And the hope that you inspired in all of us will come to fruition in calendar year 2021.

Thank you, Judge.

(Sound played.)

THE COURT: Thank you, Mr. Kirpalani.

I ask that you all just wait patiently with me for a minute.

Thank you for your patience. I am now going to make my ruling.

Before the Court is the Joint Motion of PSA Creditors Pursuant to Section 312 of PROMESA and Section 105 of the Bankruptcy Code to Impose Deadlines for Plan of Adjustment, which is Docket Entry No. 14478 in Case No. 17-3283. This motion was filed by the Ad Hoc Group of Constitutional Debtholders, the Ad Hoc Group of General Obligation Bondholders, the Lawful Constitutional Debt Coalition, and the QTCB Noteholder Group, which I'll refer to collectively as the PSA Creditors, or Movants.

The motion is the subject of several objections by the Oversight Board, AAFAF, National, Ambac, and the UCC, as well as a statement by the ERS Bondholders, and the Movants

have filed a Reply. The Court has considered carefully the parties' submissions and the arguments made on the record today. Again, the Court appreciates the parties reorienting their remarks to address specifically the Court's preannounced inclination as to the ruling.

The Court has jurisdiction of this motion under Section 306(a) of PROMESA. The Court now makes its oral ruling as to the motion, and reserves the right to make non-substantive corrections in the transcript of the ruling.

The motion is denied in part and granted in part for the following reasons: The parties don't dispute the Court's authority to impose deadlines, but only the propriety of imposing those requested by the PSA Creditors, together with a predetermined sanction of dismissing the Title III case if such aggressive deadlines are not met. At issue then is a prudential dispute rather than a legal one.

Section 312(b) of PROMESA clearly provides that "if the Oversight Board does not file a plan of adjustment with the petition, the Oversight Board shall file a plan of adjustment at the time set by the court." Moreover, Section 105(a) of the Bankruptcy Code, as incorporated by Section 301(a) of PROMESA, supplements the Court's inherent authority to manage its docket and courtroom in an efficient manner by recognizing the Court's authority to issue any order that is necessary or appropriate to carry out the provisions of

PROMESA.

While the Court is not persuaded that the specific relief requested by the moving creditors is appropriate, the Court does find that a near term deadline for a definitive action with respect to the contours of an amended plan proposal is necessary and should help to focus the existing members of the Board, new political leaders, and new members of the Board on the need to work with each other and with creditors to find a path to a realistic exit from Title III.

While it is certainly true that progress has been made in the more than three years that these cases have been pending, despite an extraordinary confluence of natural disasters and political upheaval, there probably will never be a time when the unexpected can't be expected to occur, and a confirmable plan, preferably a substantially consensual one, is necessary for Puerto Rico and its instrumentalities to truly move forward as contemplated by PROMESA.

The Court agrees with the objectors that the deadlines sought by Movants are unrealistically harsh, and Movants have indicated that they will not push back on the Court's inclination to make the first critical deadline one that is early in 2021. The Court finds that that is appropriate given the ongoing pandemic issues, the changes in Oversight Board membership, and Puerto Rico's elections and their aftermath.

So, the specific relief that was requested is denied, but the Court is nevertheless persuaded that successful work, including meaningful negotiations, may be facilitated by imposing a deadline for the Oversight Board to produce a substantial product early in 2021. Logically, the power to impose a deadline for filing a plan of adjustment also empowers the Court to set deadlines relating to plan amendments. Moreover, Section 105, and the Court's inherent authority provide ample grounds for the Court to require the Oversight Board, which must leave this process and stake out the territory for a confirmable plan of adjustment, consensual or otherwise, to formulate and disclose the material terms upon which it intends to proceed, and to disclose the material terms or a formal plan amendment.

Therefore, the Court is Ordering the Oversight Board to file, by February 10th, 2021, at a minimum, an informative motion comprising a term sheet disclosing the material, economic and structural features of an amended plan of adjustment that the Oversight Board intends to propose for confirmation, and preferably, a formal, proposed amended plan and disclosure statement, together with a proposed timetable for the remaining events through confirmation, including, if necessary, formal plan and proposed disclosure statement, and certainly including discovery and litigation in connection with the proposal, solicitation, voting and confirmation

proceedings.

If the Board does not file a formal, proposed amended plan and disclosure statement on or before February 10th, the timetable must be a very tight timetable to a formal proposed plan of adjustment and then the subsequent events. In developing the amended plan of adjustment, the Oversight Board and other relevant stakeholders are encouraged to negotiate responsibly and in good faith. Failure to comply with the February 10th, 2021, deadline may result in the consideration of more stringent measures.

The Court does recognize that there may be some motion practice in relation to some of these requirements, and that will be taken up on its merits, if necessary, in terms of any requested changes to the timing. Of course, nothing in this Order precludes the Oversight Board from filing a formal amended plan of adjustment prior to the deadline. At a minimum, the Board has to disclose the basic material elements of the proposal and a specific timetable.

The disclosure required by this Order is in addition to periodic reports pursuant to the Order Regarding Status Report of Financial Oversight and Management Board for Puerto Rico Regarding COVID-19 Pandemic and Proposed Disclosure Statement Schedule. That Order is at ECF No. 14679.

In its most recent such status report filed at ECF No. 14923, the Oversight Board has proposed to file a further

status report by December 4th, 2020, and so the next status report shall be filed on or before that date.

Accordingly, the Joint Motion of PSA Creditors Pursuant to Section 312 of PROMESA and Section 105 of the Bankruptcy Code to Impose Deadlines For Plan of Adjustment, Docket Entry No. 14478, is granted to the extent that the Oversight Board is required to develop and disclose the contours of its proposed amended plan, and propose a schedule for the path to confirmation as outlined in these remarks, and is denied in all other respects. And the Court will enter an order promptly embodying this ruling.

Thank you all for your arguments, for your submissions, and again, for your pivot to address the Court's specific concerns and proposals. Are there any other matters that anyone wants to address today? I will wait 30 seconds for anyone to speak who wants to be heard.

(No response.)

THE COURT: Very well. This concludes the hearing Agenda for today. Tomorrow's telephonic hearing concerning Omnibus Claim Objections will begin at 9:30 AM Atlantic Standard Time.

As always, I thank the court staff in Puerto Rico, Boston and New York for their work in preparing for and conducting today's hearing, and for their outstanding ongoing support of the administration of these very complex cases.

Stay safe and keep well, everyone. We are adjourned.

(At 12:39 PM, proceedings concluded.)

* * *

U.S. DISTRICT COURT)

DISTRICT OF PUERTO RICO)

I certify that this transcript consisting of 98 pages is a true and accurate transcription to the best of my ability of the proceedings in this case before the Honorable United States District Court Judge Laura Taylor Swain, and the Honorable United States Magistrate Judge Judith Gail Dein on October 28, 2020.

S/ Amy Walker

Amy Walker, CSR 3799

Official Court Reporter

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